

SENATE, No. 934

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 1, 2010

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

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District 21 (Essex, Morris, Somerset and Union)

SYNOPSIS

“Opportunity Scholarship Act”; establishes pilot program in Department of the Treasury to provide tax credits to entities contributing to scholarships for low-income children eligible to enroll in certain schools.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing the Opportunity Scholarship Program in the
2 Department of the Treasury and supplementing P.L.1945, c.162
3 (C.54:10A-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. This act shall be known and may be cited as the
9 “Opportunity Scholarship Act.”
10

11 2. The Legislature finds and declares that:

12 a. It is an undeniable fact that parents of limited means are less
13 able to provide educational options for their children, even in those
14 instances in which the parent feels that the public school is failing
15 his child, and to select the learning environment that might best
16 meet the needs of the child;

17 b. The Appellate Division of the Superior Court of New Jersey
18 in a 2009 decision, Crawford v. Davy, ruled that children enrolled
19 in schools in which the majority of students failed at least one
20 subject area of the State assessments in multiple consecutive years
21 currently have no entitlement to better educational opportunities in
22 another school district or nonpublic school;

23 c. Consequently, it is critical to provide a mechanism that will
24 provide students enrolled in these failing schools the opportunity to
25 receive a quality education;

26 d. The United States Internal Revenue Code currently provides
27 deductions from gross income for contributions made to qualified
28 charities that provide educational scholarships, and a system of
29 corporate tax credits in this State would serve to ensure the
30 availability of the scholarship funds necessary to provide greater
31 educational opportunities for students in failing schools;

32 e. Similar tax credit programs have been instituted in other
33 states and have served to advance the educational needs of children
34 who come from families of limited means;

35 f. The United States Supreme Court in its 2002 decision,
36 Zelman v. Simmons-Harris, found that a program providing tuition
37 aid in the form of scholarships for some students to attend public or
38 nonpublic schools of a parent’s choosing did not violate the
39 Establishment Clause of the United States Constitution; and

40 g. In light of New Jersey’s constitutional commitment to
41 ensuring educational justice for every child, regardless of the
42 relative wealth or poverty of a child’s parents, it is appropriate that
43 the State initiate a tax credit scholarship program on a pilot basis to
44 assess its impact on the educational opportunity and achievement of
45 children whose current education options are limited to a poorly
46 performing school.
47

48 3. As used in this act:

1 "Eligible school" means an out-of-district public school or an in-
2 district or out-of-district nonpublic school located in this State
3 offering a program of instruction for kindergarten through 12th
4 grade, or any combination of those grades that:

5 (1) is open to all students who are eligible to participate in the
6 pilot program established pursuant to section 4 of this act on a
7 space-available basis and does not discriminate in its admission
8 policies or practices for scholarship applicants enrolled in a public
9 school on the date of the scholarship application on the basis of
10 intellectual or athletic ability, measures of achievement or aptitude,
11 status as a handicapped person, proficiency in the English language,
12 or any other basis that would be illegal if used by a school district;
13 however nothing shall prohibit an eligible school from limiting
14 admission to a particular grade level or to areas of concentration of
15 the eligible school, such as mathematics, science, or the arts; and,

16 (2) is in full compliance with all federal, State, and local laws.

17 "Household income" means income as defined for the purposes
18 of determining eligibility for a free or reduced price lunch pursuant
19 to the State School Lunch Program.

20 "Low-income child" means a child from a household with an
21 income that does not exceed 2.50 times the official federal poverty
22 level based on family size, established and adjusted under Section
23 673(2) of Subtitle B, the "Community Services Block Grant Act,"
24 Pub. L.97-35 (42 U.S.C.s.9902(2)), for the school year preceding
25 the school year for which an educational scholarship is to be
26 distributed.

27 "Persistently underperforming school" means any school that
28 meets either of the following criteria:

29 (1) among all students in that school to whom a State
30 assessment was administered, the percent of students scoring in the
31 partially proficient range in both the language arts and mathematics
32 subject areas of the State assessments exceeded 50% in each of the
33 prior two school years; or

34 (2) among all students in that school to whom a State
35 assessment was administered, the percent of students scoring in the
36 partially proficient range in either the language arts or mathematics
37 subject area of the State assessment exceeded 75% in each of the
38 prior two school years.

39 "Scholarship organization" means an organization that has been
40 determined by the federal Internal Revenue Service to be qualified
41 as a tax-exempt organization pursuant to paragraph (3) of
42 subsection (c) of section 501 of the federal Internal Revenue Code
43 of 1986 (26 U.S.C.s.501) and that:

44 (1) requires that any tax-creditable contributions accepted by it
45 be designated by the contributor at the time of contribution as a
46 contribution pursuant to this act;

47 (2) distributes not less than 95% of the tax-creditable
48 contributions that it accepts pursuant to this act as educational

1 scholarships to low-income students;

2 (3) distributes individual scholarships that:

3 (a) in the case of a scholarship student enrolled in grades
4 kindergarten through 8, equal 40% of the prior school year's actual
5 average comparative cost per pupil, as reported in the Department
6 of Education's Comparative Spending Guide, for the school district
7 in which the persistently underperforming school is located; and

8 (b) in the case of a scholarship student enrolled in grades 9
9 through 12, equal 59% of the prior school year's actual average
10 comparative cost per pupil, as reported in the Department of
11 Education's Comparative Spending Guide, for the school district in
12 which the persistently underperforming school is located;

13 (4) ensures that a child receives in any school year no more than
14 one scholarship pursuant to the provisions of this act; and

15 (5) has complied with such other requirements as the Director of
16 the Division of Taxation in the Department of the Treasury may
17 require.

18

19 4. a. Beginning in the first State fiscal year following the
20 effective date of this act, the Director of the Division of Taxation in
21 the Department of the Treasury shall establish a five-year pilot
22 program to provide tax credits to corporations which contribute
23 funding for scholarship organizations which provide educational
24 scholarships to help low-income children who are enrolled in or
25 eligible to enroll in a persistently underperforming school pay
26 tuition at an eligible school.

27 b. Subject to the restrictions established pursuant to subsection
28 d. of this section, a taxpayer shall be allowed a credit against the tax
29 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for
30 a privilege period, in an amount equal to 100% of the contributions
31 made by the taxpayer for a scholarship organization during the
32 privilege period; provided that the taxpayer shall designate at the
33 time the contribution is made that the contribution is made pursuant
34 to this act.

35 c. The order of priority of the credit allowed under this act and
36 any other credits allowed by law shall be as prescribed by the
37 director. The amount of the credit applied under this act against the
38 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)
39 for a privilege period shall not reduce the tax liability to an amount
40 less than the statutory minimum provided in subsection (e) of
41 section 5 of P.L.1945, c.162 (C.54:10A-5). An unused amount of
42 credit shall expire at the end of the privilege period.

43 d. In aggregate, the total tax contribution of all participating
44 corporations shall not exceed \$24,000,000 the first State fiscal year,
45 \$48,000,000 the second State fiscal year, \$72,000,000 the third
46 State fiscal year, \$96,000,000 the fourth State fiscal year, and
47 \$120,000,000 the fifth State fiscal year. If the sum of the amount of
48 tax credits authorized pursuant to this section in a State fiscal year

1 exceeds the aggregate annual limits established pursuant to this
2 subsection, tax credits shall be allowed in the order that
3 contributions are made until the limit is reached.

4
5 5. There is hereby established in the Department of the
6 Treasury a separate fund entitled the "Opportunity Scholarship
7 Fund." The fund shall be maintained by the Treasurer separate and
8 apart from any other funds. The fund shall be credited with
9 contributions made by taxpayers for scholarship organizations
10 pursuant to section 4 of this act. All interest or other income or
11 earnings derived from the investment or reinvestment of moneys in
12 the fund shall be credited to the fund. The moneys in the fund are
13 specifically dedicated to help low-income children who are enrolled
14 in or eligible to enroll in a persistently underperforming school pay
15 tuition at eligible schools.

16
17 6. a. There is hereby established the Opportunity Scholarship
18 Fund Board. The board shall consist of three public members, one
19 appointed by the Governor, one appointed by the President of the
20 Senate, and one appointed by the Speaker of the General Assembly.
21 Each of the members shall be a representative of an entity subject to
22 the tax imposed pursuant to section 5 of P.L.1945, c.162
23 (C.54:10A-5) or an employee of such entity.

24 b. The board shall select one scholarship organization in each
25 of the counties in which at least one persistently underperforming
26 school is located to administer the scholarship funds made available
27 through contributions received pursuant to section 4 of this act and
28 on deposit in the Opportunity Scholarship Fund or may select a
29 scholarship organization to administer scholarship funds in more
30 than one county.

31 c. (1) The board shall allocate funds on deposit in the
32 Opportunity Scholarship Fund to the selected scholarship
33 organizations. The total funds available for scholarships for each
34 school year shall be allocated to the scholarship organization
35 selected in the county in which a persistently underperforming
36 school is located as follows: the total enrollment, excluding
37 preschool students, of all persistently underperforming schools in
38 the county divided by the total enrollment, excluding preschool
39 students, of all persistently underperforming schools Statewide, and
40 the result shall be multiplied by the total funds available for that
41 school year.

42 (2) No more than 25% of a scholarship organization's
43 scholarship allocation in any school year shall be used to provide
44 scholarships to low-income students enrolled in nonpublic schools
45 on the effective date of this act; except that if by August 1 of any
46 school year, scholarship funds available for the scholarship
47 organization remain unallocated, then the funds may be used to
48 provide additional scholarships for that school year to low-income

1 students enrolled in nonpublic schools on the effective date of this
2 act.

3 (3) If by August 15 of any school year, scholarship funds
4 available for the scholarship organization remain unallocated, then
5 the unallocated funds shall be used to provide scholarships for that
6 school year to low-income children residing in other counties. The
7 board shall determine the apportionment of unallocated funds to the
8 other counties.

9 d. The board shall commission an independent study of the
10 pilot program. The study shall be conducted by an individual or
11 entity primarily identified with expertise in the field of urban
12 education. The individual or entity shall design a comprehensive
13 study of the pilot program which shall include, but not be limited to,
14 consideration of the following:

15 (1) the academic achievement of scholarship recipients based on
16 test results and other educational indicators;

17 (2) the impact of the pilot program on achieving savings for
18 State taxpayers;

19 (3) the impact of the program on student enrollment patterns;
20 and

21 (4) parental satisfaction with the pilot program.

22 e. On or before January 1 of the fifth school year of the pilot
23 program, the board shall submit a report to the Governor, and to the
24 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
25 on the implementation and results of the pilot program. The report
26 shall be based on the annual reports submitted by the scholarship
27 organizations pursuant to subsection b. of section 7 of this act and
28 the independent study conducted pursuant to subsection d. of this
29 section. The report shall include a recommendation on whether the
30 program should be reauthorized on a permanent basis.

31

32 7. a. A scholarship organization selected by the board pursuant
33 to subsection b. of section 6 of this act shall require that an eligible
34 school which admits a child receiving an educational scholarship
35 under the pilot program:

36 (1) accept the scholarship as payment in full for a child's tuition
37 and any other costs of attendance payable to the school;

38 (2) ensure that a child enrolled in an eligible school who
39 received a scholarship under the program in the prior school year
40 receives a scholarship in each school year of enrollment under the
41 program provided that the child remains eligible;

42 (3) in the event that more children apply for admission under the
43 pilot program than there are openings at the eligible school,
44 determine through a lottery which children are selected for
45 admission, except that preference for enrollment may be given to
46 siblings of students who are enrolled in the eligible school; and,

1 (4) if the eligible school is a nonpublic school, administer an
2 annual test to scholarship recipients that is aligned with the core
3 curriculum content standards.

4 b. A selected scholarship organization shall:

5 (1) manage the scholarship application process for the school
6 district in which the persistently underperforming school is located;

7 (2) review and verify the income and residence of a scholarship
8 applicant;

9 (3) compile an inventory of vacancies in eligible schools
10 available for potential scholarship recipients;

11 (4) conduct necessary student selection lotteries in accordance
12 with the requirements of paragraph (3) of subsection a. of this
13 section;

14 (5) monitor the enrollment of scholarship students in eligible
15 schools and allocate scholarship funds to those schools; and,

16 (6) prepare a report to be submitted to the State Treasurer by
17 December 1 of each year that includes, but is not limited to, the
18 following information for the prior school year: the amount of
19 scholarship funds received by the scholarship organization from the
20 Opportunity Scholarship Fund; the administrative costs of the
21 scholarship organization; the amount of scholarship funds dispersed
22 on behalf of scholarship recipients to eligible schools that are public
23 schools, and a listing of those eligible schools; the amount of
24 scholarship funds dispersed on behalf of scholarship recipients to
25 eligible schools that are nonpublic schools, and a listing of those
26 eligible schools; and the number of scholarship applications which
27 exceeded available scholarship funds.

28 The board shall make the annual report available to the parents
29 or guardians of scholarship recipients and to members of the public.
30

31 8. The Department of Education shall annually identify
32 persistently underperforming schools. The Opportunity Scholarship
33 Fund Board shall publicize the pilot program to the parents of
34 children attending a persistently underperforming school.
35

36 9. The Director of the Division of Taxation shall adopt
37 regulations in accordance with the "Administrative Procedure Act,"
38 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
39 of this act.
40

41 10. This act shall take effect immediately.
42
43

44 STATEMENT
45

46 This bill directs the Director of the Division of Taxation to
47 establish a five-year pilot program to provide tax credits to
48 corporations which contribute funding to nonprofit organizations

1 that provide scholarships to help low-income children attending
2 persistently underperforming schools pay tuition at out-of-district
3 public schools or in-district or out-of-district nonpublic schools
4 located in the State. The bill defines a persistently underperforming
5 school as one in which, for the past two school years: more than
6 50% of the school's students did not pass the language arts and
7 mathematics subject areas of the State assessments; or more than
8 75% of the students did not pass either the language arts or
9 mathematics subject areas. A child is considered low-income if the
10 child lives in a household in which the income does not exceed
11 250% of the federal poverty level.

12 Under the pilot program a tax credit will be equal to 100% of the
13 contribution a corporation makes to a qualified scholarship
14 organization. While there is no limit on the amount that can be
15 contributed for credit, a corporation may not apply the credits to
16 reduce its tax liability to an amount less than the statutory minimum
17 provided in subsection (e) of section 5 of P.L.1945, c.162; and the
18 total tax credit of all participating corporations is capped at
19 \$24,000,000 the first State fiscal year, \$48,000,000 the second State
20 fiscal year, \$72,000,000 the third State fiscal year, \$96,000,000 the
21 fourth State fiscal year, and \$120,000,000 the fifth State fiscal year.
22 If the sum of the amount of tax credits authorized in a State fiscal
23 year exceeds the aggregate annual limits, tax credits will be allowed
24 in the order that contributions are made until the limit is reached.

25 The bill establishes the Opportunity Scholarship Fund to be
26 credited with contributions made by taxpayers to nonprofit
27 scholarship organizations. The bill directs the Opportunity
28 Scholarship Fund Board to select one scholarship organization in
29 each of the counties in which a persistently underperforming school
30 is located to administer the scholarship funds, or the board may
31 select a scholarship organization to administer the funds in more
32 than one county. The board, in consultation with the State
33 Treasurer, is to distribute the funds to the selected scholarship
34 organizations.

35 The scholarship organizations selected under the bill must
36 require that an eligible school which admits a child receiving a
37 scholarship under the pilot program:

38 (1) accept the scholarship as payment in full for the child's
39 tuition and other costs of attendance;

40 (2) in the event that more children apply for admission to that
41 school under the pilot program than there are openings, that
42 students will be selected through a lottery;

43 (3) ensure that a child enrolled in an eligible school who
44 received a scholarship under the program in the prior school year
45 receives a scholarship in each school year of enrollment under the
46 program provided that the child remains eligible; and

47 (4) in the case of an eligible school that is a nonpublic school,
48 that the school administer an annual test to scholarship students that

1 is aligned to the core curriculum content standards.

2 The scholarship organization selected in each county will
3 manage the scholarship application process; review and verify the
4 residence of scholarship applicants; compile an inventory of
5 vacancies in eligible schools; conduct necessary student selection
6 lotteries; monitor the enrollment of scholarship students in eligible
7 schools; and prepare an annual report to be submitted to the State
8 Treasurer that provides information on the program for the prior
9 school year.

10 The bill directs the board to commission an independent study on
11 the implementation of the pilot program by an individual or entity
12 with expertise in the field of urban education. The study will
13 consider issues such as the academic achievement of scholarship
14 recipients, the impact of the pilot program on achieving savings for
15 State taxpayers, the impact of the pilot program on student
16 enrollment patterns, and parental satisfaction with the program.

17 On or before January 1 of the fifth school year of the pilot
18 program, the board is directed to submit a report to the Governor
19 and the Legislature on the implementation and results of the pilot
20 program. The report will include a recommendation on whether the
21 program should be reauthorized on a permanent basis.

WITHDRAWN